IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1255 OF 2007
IN
CRIMINAL APPEAL NO.1208 OF 2007

1. Smt.Hanifa Kitabulla Khan,
2. Dr.Nazneen Kitabulla Khan,
3. Kum.Parveen Kitabulla Khan, &
4. Imran Kitabulla Khan. ..Applicants.

Versus

The State of Maharashtra. ..Respondent.

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Mr.H.H.Ponda, Adv. for the Applicants.
Mr.A.R.Patil, APP, for the State.

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CORAM : S.B.MHASE AND
SMT.V.K.TAHILRAMANI,JJ.

DATED : DECEMBER 17, 2007.

P.C.:-

1. Heard both sides.

2. This is a bail application by the convicted accused in Sessions Case No.350 of 1999 from the file of the Additional Sessions Judge, Greater Bombay. By judgment and order dated 30th October, 2007, all these accused have been convicted under Section 302 of IPC and sentenced to undergo RI for life and to

pay fine of Rs.5000/- each in default to suffer RI for six months. They are also convicted under Section 201 of IPC and sentenced to undergo RI for three years and to pay fine of Rs.500/- each in default to suffer RI for three months. Mr.Ponda, the learned Advocate for the applicants states that the fine amount will be deposited immediately.

3. The applicants were all convicted for committing murder of deceased Alimunisa, who was daughter-in-law of applicant No.1. Applicant Nos.2 & 3 were the sisters-in-law of the deceased and applicant No.4 was the brother-in-law of the deceased. The husband of the deceased is living, but, at the time of the incident he was in Gujarat. The death has been caused due to the injuries as stated in the post-mortem report. They are as under :-

1. Contusion over left side face extending from 2 cms. above outer 1/3rd of left eyebrow to upto maxilla involving outer 1/3rd of upper eyelid and area below lower eyelid, 7 cms vertically, 11 cms. horizontally x

muscle deep on cut section reddish colour.

2. Contusion with swelling of lower lip left to midline, size 3.5. cms. x 2.5 cms inner mucosa also contused with overlying abrasion of size 2 cms. X 2 cms. Reddish colour.

3. Contusion over nasal bridge, 2 cms x 1 cm reddish colour.

4. Abrasion 1 cm lateral to outer canthus of right eye, 1.5 cms x 1 cm reddish colour.

5. Contusion over dorsal aspect of left hand 3 cms above knuckle of index finger of size 1 cm. x 1 cm. Reddish colour.

. There were also corresponding injuries, which are as under :-

1. Contusion of scalp over its under surface (subgallial haematoma) on left side frontal, parietal, temporal region of size 7 cms. x 6 cms.

2. Left tempralis muscle contused.

3. Contusion of scalp with subgallial haematoma over left side occipital temporal region of size 6 cms x 7 cms.

4. The Doctor has opined that the death has taken place due to haemorrhage and shock due to rupture of spleen. Though, attempt has been made by the defence counsel to show that all these injuries have been caused due to fall from the kitchen platform, the Doctors have categorically stated that the main injury to spleen is not possible by fall from a kitchen platform. The Doctor has even though admitted that the injuries are possible by fall, still so far as whether all the injuries are cumulatively possible by fall, the answer is in the negative. If we look to the nature of the injuries, we also find that the injuries, as seen on the body

of the deceased, are not possible by fall of deceased from the kitchen platform. And therefore the theory of fall has been rightly rejected by the trial Court. We also reject the same.

5. The learned Counsel submitted that none of the accused persons were in the house at the time of the incident. Infact applicant Nos.1 to 3 are the women members and they are expected to be at the house. The injuries are possible by a hard and blunt substance and, therefore, it is a case of not even fall but of a beating. The death has taken place in the house and therefore all the members are expected to be at the house. The time when the dead body was found, it was 12:30 to 1:30 p.m. and at that time it is not possible that the house members are not in the house and, therefore, the theory that the accused persons were not in the house *prima facie* on facts of the case and the timing at which the incident has taken place and the body was found falsifies. Therefore on merits, we find that there is no case.

6. However, we are inclined to grant bail to applicant Nos.1 to 3 being women. Applicant No.1 is

of the age of 60 years and the applicant Nos.2 & 3 are the young ladies having children. At the time of the incident they were unmarried. Applicant No.1 can also be said to be an old woman and applicant Nos.2 & 3 are simplicitor women and they can fall under the category of women. Applicant Nos.1 to 3 were on bail during the trial and, therefore, they being not mis-utilised the bail, this persuades us to grant bail to applicant Nos.1 to 3 only. However, considering the case of applicant No.4, we did not find that there is any case for grant of bail to applicant No.4. Hence, his application deserves to be rejected. We therefore, pass the following order :-

ORDER

(1) Applicant Nos.1 to 3 be released on bail of Rs.10,000/- (Rs.Ten Thousand Only) each, with like solvent surety. However, subject to payment of fine amount as condition precedent.

(2) Bail application of applicant No.4 is hereby rejected.

(3) Application is disposed of accordingly.

[SMT.V.K.TAHILRAMANI,J.] **[S.B.MHASE,J.]**